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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

W. P. No. 597 of 2004

Petitioner : Chandikeshwar Singh

Versus

Respondents : The State of Chhattisgarh & others

Post for order on 25th June, 2007.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 597 of 2004

Petitioner : Chandikeshwar Singh, s/o Ram Narayan Singh, aged about 31 years, Secretary, Gram Panchayat Obri, Tehsil Pal, District Surguja, C.G.

-Versus-

Respodnents : 1. The State of Chhattisgarh, through Secretary, Panchayat, D.K.S. Bhawan, Raipur, C.G.

2. Gram Panchayat Obri, Tehsil Pal, District Surguja, C.G. through Sarpanch, Address: At/Post Obri, Tehsil Pal, District Surguja, C.G.

3. Collector, Surguja, C.G.

4. Shobhnath Gupta, Up Sarpanch, Gram Panchayat Obri, At/Post obri, Tehsil Pal, District Surguja, C.G.

SB: Hon'ble Mr. Justice **Satish K. Agnihotri**

Shri A. K. Prasad, Advocate for the petitioner.
Shri Yashwant Singh Thakur, Govt. Advocate for the respondents No. 1 and 3.
None for the respondents No. 2 and 4.

ORDER

(Passed on this 25th day of June, 2007)

1. The present petition filed under Article 226/227 of the Constitution of India impugns the order dated 30.1.2004 (Annexure P/12) passed by the respondent No.2, whereby the petitioner has been terminated from the post of Panchayat Karmi of the Gram Panchayat Obri, Tehsil Pal, District Surguja, on the ground that the petitioner has committed irregularities in performance of his duties.

2. The undisputed facts, in nutshell, are that the petitioner was appointed as Panchayat Karmi by order dated 6.12.1997 (Annexure P/1). The petitioner was thereafter declared as Panchayat Secretary of the said Gram Panchayat.

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3. The order dated 16.12.2003 (Annexure P/3) was issued to the petitioner by the Sarpanch, wherein it was directed to the petitioner to produce certain documents and registers of the Gram Panchayat, concerning the period February, 2000 to November, 2003, on 17.12.2003, very next day. It was further stated that in the event of any lapse or dereliction on the part of the petitioner, there might be initiated a disciplinary proceeding against him for removal from the post of Panchayat Karmi.

4. In compliance of the above order dated 16.12.2003 the petitioner produced all the documents before the Sarpanch of the Gram Panchayat on 17.12.2003 and obtained a receipt thereof (Annexure P/4). According to learned counsel appearing for the petitioner, the respondent No.4 – Shri Shobh Nath Gupta, Up-Sarpanch of the Gram Panchayat, wrote a letter dated 20.12.2003 (Annexure P/5) to the petitioner, demanding a sum of Rs. 2,00,000/- from the petitioner, in default threatening removal from the post of Secretary. Before writing of the letter by the respondent No.4, an amount of about Rs. 15,00,000/- was received by the Gram Panchayat, Obri for undertaking certain works.

5. After receipt of the letter of threat dated 20.12.2003 from the respondent No.4, the petitioner made a complaint to the Chief Executive Officer, Janpad Panchayat, Balrampur on 20.12.2003 (Annexure P/6). The petitioner also sent a complaint on 26.12.2003 (Annexure P/7) to the Inspector General of Police, Surguja Range.

6. Thereafter, according to learned counsel appearing for the petitioner, the petitioner filed a complaint case in the Court of Judicial Magistrate First Class, Ramanujganj under Sections 294, 506 Part-II and 383 of the Indian Penal Code on 22.1.2004 (Annexure P/8). It is stated by learned counsel for the petitioner that cognizance of the same was taken by the Magistrate concerned. It was sent to the Police for investigation and report. The petitioner

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also made a complaint dated 21.1.2004 (Annexure P/9) to the Collector with regard to the above incident.

7. The Collector, Surguja vide order dated 12.1.2004 (Annexure P/10) directed for convening meetings of all Gram Sabhas, constituted in district Surguja, on 23.1.2004. Accordingly, meeting of seven Gram Sabhas, falling in Gram Panchayat Obri was held and thereafter the impugned order dated 30.1.2004 was passed.

8. It is mentioned in the impugned order dated 30.1.2004 (Annexure P/12) that in the meetings of the Panchayat dated 18.1.2004 and 30.1.2004, in view of the resolutions dated 23.1.2004, 24.1.2004, 25.1.2004 passed in various Gram Sabha meetings, the petitioner was terminated from the post of Panchayat Karmi as he has allegedly committed irregularities while working as Panchayat Karmi. Pursuant to the said Gram Sabha resolutions, the services of the petitioner as Panchayat Karmi was terminated w.e.f. 30.1.2004.

9. Learned counsel appearing for the petitioner further submits that Rule 7 of the Rules, 1999 provides for procedure before terminating service of a member of Panchayat. In the instant case, the said provisions were not followed, no definite charges were framed and the petitioner was not served with the articles of charges before holding an enquiry leading to termination of the petitioner from his services.

10. Learned counsel further submits that though it was an appointment on temporary basis but the termination order was passed on the basis of the allegation that the petitioner has commit irregularities in performance of his duties as Panchayat Karmi. He further submits that the order is stigmatic and removal from service comes within the purview of major penalty, the same could not have been passed without following the procedure as laid down in the provisions of law, as prescribed in Rule 7 of the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short 'the Rules, 1999').

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11. Despite service of several notices, the respondent No.2 Gram Panchayat- Obri and respondent No.4 Shobhnath Gupta, Up-Sarpanch of Gram Panchayat-Obri, have chosen not to appear in the proceeding.

12. Shri Yashwant Singh Thakur, learned counsel appearing for the respondents No. 1 and 3 would categorically submit that on perusal of the papers, it is evident that the procedure prescribed in Rule 7 of the Rules, 1999 appears to have not been followed. The petitioner was appointed on 6.12.1997 and without following the due process of law, the petitioner has been removed on 30.1.2004 on the basis of the resolutions passed by the concerned Gram Sabhas, which is not sustainable in law.

13. Admittedly, the Gram Panchayat, before passing the impugned termination order has not complied with the provisions of Rule 7 of the Rules, 1999. This Court in **Dhaluram Kosaria Vs. State of C.G. & others**[1], **Beegan Ram Vs. State of C.G. & others**[2] and **Prakash Chand Soni Vs. State of C.G. & others**[3] has held that the non-compliance of the statutory provisions and denial of principles of natural justice tantamounts to infraction of not only the provisions of Rule 7 of the Rules, 1999 but the provisions of Article 311 (2) of the Constitution of India also. The order of removal being penal in nature, visiting with civil consequences, cannot be passed without holding the enquiry in accordance with the elaborate provisions as prescribed in Rule 7 of the Rules, 1999.

14. It is thus clear that the respondents have not followed the statutory provisions of law before passing the impugned order.

15. In view of the foregoing, the petition deserves to be and is allowed. The impugned order dated 30.1.2004 (Annexure P/12) is quashed. No costs.

16. On the question of back wages, no foundation has been laid to establish the fact that whether the petitioner was gainfully employed elsewhere or not during this period. Even otherwise keeping in view that the termination order

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has been vitiated not on merit but on account of non-compliance of the statutory provisions before terminating the services of the petitioner, 30% back wages would be sufficient in the interest of justice. However, this order shall not come in the way of the authorities to take appropriate action against the petitioner in accordance with law, if so advised.

Sd/-
Satish K. Agnihotri
Judge

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1. 2006(2) C.G.L.J. 186[1]
2. 2006 L.T.(C.G.) 41[2]
3. 2005 L.T. (C.G.) 151[3]

Thakur